IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 578 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SP PATEL

Versus

GPSC

Appearance:

1. Special Civil Application No. 578 of 1999

MR PARESH UPADHYAY for Petitioner No. 1

Mr. N.D. Gohil, AGP for Respondent No. 1-2

RULE SERVED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/09/2003

ORAL JUDGEMENT

Heard learned advocate MR PARESH UPADHYAY for

Petitioner and Mr. N.D. Gohil, AGP for Respondent No. 1-2. Today, when this petition was taken up for hearing, learned advocate Mr. R.J. Oza appearing for respondent No. 1 has not remained present before this court. It appears from the record that the rule issued by this court has been served upon respondents no.3/4 but no appearance has been filed on their behalf. Therefore, the matter has been taken up for hearing in their absence.

Brief facts of the present petition are to the effect that on 25th November, 1966, initially, the petitioner was appointed as junior clerk in the office of the Gujarat Public Service Commission (GPSC) and then, the petitioner was promoted as Assistant on 9th September, 1971. Thereafter, the petitioner was again promoted as Section Officer on 14th September, 1981 and he was working on the said post till the date of the present petition without any interruption. On 29th September, 1992, Higher Grade Scale was given to the petitioner by the GPSC after completion of 9 years service in the cadre of Section Officer with effect from 1st August, 1990. Thereafter, on 25th October, 1996, final seniority list was prepared for the cadre of Section Officer and published wherein the petitioner's name was shown at Sr. NO. 18 whereas the names of respondents no.3 and 4 namely Mr. Rasalwala and Mr. Shaikh were shown at Sr. No. 18 and 20 respectively as junior to the petitioner. According to the petitioner, said seniority list was not challenged by anybody. Thereafter, on 1st February, 1999, one post of Deputy Secretary had fallen vacant due to retirement of one officer and the petitioner was the senior most person in the cadre of Section Officer for being considered for promotion for the post of Deputy Secretary. According to the petitioner, on 24th November, 1998, the GPSC passed an order that the petitioner will be considered as Section Officer on long term basis with effect from 1st April, 1983 though the petitioner was working on the post of Section Officer since 14th September, 1981 against which two representations were filed by the petitioner dated 2nd December, 1998 and 21st December, 1998 but no response was given by the GPSC. It is the grievance of the petitioner that on the contrary, persons junior to the petitioner were being promoted as Junior Clerk without considering the case of the petitioner for such promotion. The petitioner, therefore, filed the present petition before this court.

Initially, this court issued notice and thereafter admitted the petition by issuing rule by order

dated 19th March, 1999 and by way of interim relief, it was directed that pending petition, order dated 24th November, 1998 shall not affect the right of the petitioner to be considered for further promotion to the post of Deputy Secretary.

It was submitted by the learned advocate Mr. Paresh Upadhyay that the interim order dated 19th March, 1999 passed by this court was challenged by the respondents before the Division Bench of this Court by filing Letters Patent Appeal No. 523 of 1999 which was disposed of by the Division Bench of this Court on 15th October, 2001, as having become infructuous. He has also produced copy of the said order passed by the Division Bench of this Court for perusal of this Court. The order dated 15th October, 2001 passed by the Division Bench of this Court in aforesaid Letters Patent Appeal No. 523 of 1999 is reproduced as under:

"Learned advocate for the appellant Mr. M.J. Parikh seeks permission to withdraw this Letters Patent Appeal stating that it has become now infructuous. Learned advocate Mr. Upadhyay who appears upon caveat for respondent no.1 has no objection. Permission to withdraw the appeal is granted. Accordingly, it stands disposed of as having become infructuous."

Thereafter, learned advocate Mr. Upadhyay submits that on 1st December, 1999, the petitioner was promoted to the post of Deputy Secretary and, thereafter, the petitioner remained in service on the promotional post upto the date of his retirement and he retired on 31st December, 2001. It was also submitted by the learned advocate Mr. Upadhyay that the interim order passed by this court on 19th March, 1999 still remain in force and the letters patent appeal filed against the said order has been disposed of by the Division Bench of this Court in view of the statement made by the learned advocate for the appellant and prior to that, the petitioner was already promoted on the post of Deputy Secretary by order dated 1st December, 1999; the petitioner worked on the said post and retired as such on 31st December, 2001.

Considering these facts, according to my opinion, present petition is also required to be disposed of in terms of the interim order passed by this Court dated 19th March, 1999. Accordingly, this petition is disposed of in terms of the interim order passed by this Court dated 19th March, 1999. Rule is accordingly made

absolute in terms indicated hereinabove. There shall be no order as to costs.

Dt. 29.9.2003. (H.K. Rathod,J.)

Vyas